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TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON APRIL 21, 2015
FROM:	GEORGE KOTSIFAS MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL AND CATHY SAUNDERS, CITY CLERK
SUBJECT:	BAN ON SHARK FIN PRODUCTS

RECOMMENDATION

That, on the recommendation of the Managing Director, Development and Compliance Services and Chief Building Official and the City Clerk, the proposed attached by-law (Appendix "A") to repeal By-law No. PH-17 being "A by-law to prohibit the possession, purchase, sale, trade, distribution, consumption, or preparation for consumption of Shark Fins within the City of London" BE INTRODUCED at the Municipal Council meeting to be held on April 28, 2015.

BACKGROUND

At its meeting of January 31, 2012, Municipal Council enacted By-law No. PH-17 to prohibit the possession, purchase, sale, trade, distribution, consumption, or preparation for consumption of shark fins within the City of London. This By-law is modelled on the City of Mississauga's Shark Fin By-law, with certain revisions. The City of Mississauga passed a Shark Fin By-law on October 12, 2011 with an enactment date of June 30, 2012. The City of Toronto passed a Shark Fin By-law on October 25, 2011, with an exemption until September 1, 2012.

The By-law was brought forward in response to public concerns raised with respect to potential health and safety impact of consuming shark fins and the alleged inhumane treatment of sharks in the collection of fins.

Subsequent to the enactment of the above-noted by-law, it has come to our attention that the City of Toronto's Shark Fin By-law has been struck down by the Superior Court of Justice. The Toronto By-law was held to be *ultra vires* (without legal authority) and without any force and effect. The Superior Court of Justice decision is attached to this report as Appendix "B". Given the Court decision, it is recommended that the City of London By-law PH-17 attached as Appendix "C" be repealed

PREPARED AND RECOMMENDED BY:	RECOMMENDED BY:
CATHY SAUNDERS CITY CLERK	G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL

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APPENDIX "A"

Bill No.
2015

A by-law to repeal By-law No. PH-17, being a by-law to prohibit the possession, purchase, sale, trade, distribution, consumption, or preparation for consumption of Shark Fins within the City of London.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, provides that a municipal power shall be exercised by by-law;

WHEREAS By-law PH-17 was passed on January 31, 2012;

AND WHEREAS Municipal Council wishes to repeal By-law PH-17;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. By-law PH-17 and any amendments thereto is hereby repealed.
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on April 28, 2015.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading – April 28, 2015
Second reading – April 28, 2015
Third reading – April 28, 2015

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APPENDIX "B"

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)	
)	
HUGHES ENG, BARBARA CHIU,)	Andrew J. Roman and Andy Chan, for
PETER TAM and JACKY MA)	the Applicants
)	
Applicant)	
)	
- and -)	
)	
THE CITY OF TORONTO)	Ansuya Pachai, for the Respondent
)	
Respondent)	
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)	
)	HEARD: November 5, 2012

2012 ONSC 6818 (CanLII)

SPENCE J.

REASONS FOR DECISION

[1] The Applicants seek a declaration under Rule 14.05(3)(d), (g) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 that By-law No. 12347-2011 of the City of Toronto (the “By-law”) is *ultra vires* and of no force and effect. The By-law provides, in section 3, that “no person shall possess, sell or consume shark fin or shark fin food products within the city of Toronto”.

[2] The Applicants contend that the By-law is *ultra vires* because it lacks a proper purpose.

[3] The first recital in the Preamble to the By-law states that “the consumption of shark fin and shark fin products may have an adverse impact on the health, safety and well-being of persons and on the economic, social and environmental well-being of the City of Toronto”.

The City contends that the By-law relates to these two matters and therefore has a proper purpose under the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A (the “Act”).

[4] The Applicants also contend that the By-law is constitutionally invalid because the province lacks the authority to delegate to a municipality the authority to pass by-laws to protect national resources that never come within provincial waters, such as sharks.

Background Facts

[5] There has been widespread media coverage of incidents of sharks being finned alive and then thrown back into the sea to die, merely to collect their fins, the most valuable part of the shark.

[6] Shark fins are usually sold in frozen or dried form. They are used as one ingredient in shark fin soup, a traditional Chinese delicacy, served at weddings or on other special occasions.

[7] The By-law was enacted by City Council (the “Council”) on October 25, 2011. The By-law came into force on September 1, 2012.

[8] The City provided an opportunity for input about the By-law at a Committee meeting on September 9, 2011 at which time the Committee received 10 communications and heard 37 deputations. The second opportunity was a further Committee meeting on October 13, 2011 at which time the Committee received 34 written communications and heard 54 deputations. The third opportunity was at Toronto City Council meetings on October 24 and October 25, 2011, at which it received 13 additional communications, 5 of which were petitions with approximately 16,000 signatures supporting the by-law.

[9] In addition to hearing from those like the Applicants who sell, purchase or consume shark fins, Committee and Council heard from educators, food industry specialists, professional and recreational scuba divers, school children and their parents, lawyers, environmentalists, animal welfare groups, naturalists, conservationists, and concerned members of the public.

[10] The legislative record is one of sharp divide and vigorous debate on the various social, environmental, economic and health issues considered by Toronto City Council. Council heard from all sides, and not just from those who supported the By-law.

[11] As of August 30, 2012, at least six other Canadian municipalities had enacted by-laws substantially similar to Toronto's By-law.

Law and Analysis

[12] It is not disputed that a municipal by-law, to be valid, must have a proper purpose, *i.e.* a purpose for which provincial law authorizes the municipality to enact a by-law.

[13] The *City of Toronto Act* provides, in part, as follows:

1. (1) The City of Toronto exists for the purpose of providing good government with respect to matters within its jurisdiction, and the city council is a democratically elected government which is responsible and accountable.

...

2. The purpose of this Act is to create a framework of broad powers for the City which balances the interests of the Province and the City and which recognizes that the City must be able to do the following things in order to provide good government:

1. Determine what is in the public interest for the City.

2. Respond to the needs of the City. ...

...

6. (1) The powers of the City under this or any other Act shall be interpreted broadly so as to confer broad authority on the City to enable the City to govern its affairs as it considers appropriate and to enhance the City's ability to respond to municipal issues.

[14] It is important that the type of issues for which the City is given its power are "municipal issues". The Act provides further as follows:

7. The City has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

8. (2) The City may pass by-laws respecting the following matters:

...

5. Economic, social and environmental well-being of the City.

6. Health, safety and well-being of persons.

...

8. Protection of persons and property, including consumer protection.

9. Animals.

...

(3) Without limiting the generality of section 6, a by-law under this section respecting a matter may,

(a) regulate or prohibit respecting the matter; . . .

10. (1) Without limiting the generality of section 6 and except as otherwise provided, a by-law under this Act may be general or specific in its application and may differentiate in any way and on any basis the City considers appropriate.

. . .

131. It is the role of city council,

(a) to represent the public and to consider the well-being and interests of the City;

(b) to develop and evaluate the policies and programs of the City; . . .

213. A by-law of the City or a local board of the City passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law. 2006, c. 11, Sched. A, s. 213.

214. (1) Upon the application of any person, the Superior Court of Justice may quash a by-law, order or resolution of the City or a local board of the City in whole or in part for illegality.

[15] The By-law, in the second recital in its preamble, refers to the powers to pass by-laws referred to in the portion of s. 8(2) of the Act excerpted above.

The Role of the Court

[16] In considering challenges to municipal by-laws, courts have embraced a generous, deferential approach which accords considerable respect to municipal councils. In modern jurisprudence, this deferential approach is exemplified in the following excerpt from the dissenting reasons of McLachlin, J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)* (“*Shell Canada*”)¹. This approach recognizes that municipal councils are elected representatives of their community and are accountable to their constituents. Accordingly:

¹ [1994] 1 S.C.R. 231, para. 63

...courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the 'benevolent construction' ...and confer the powers by reasonable implication. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives.

[17] Municipal by-laws attract a strong presumption of validity. The party challenging a by-law's validity bears the burden of proving that it is invalid. Where a by-law is susceptible to more than one interpretation, it must be read to fit within the parameters of the enabling municipal legislation. Barring "clear demonstration" of invalidity, courts should not so hold.²

[18] The analytical approach to be applied in determining the purposes of a particular by-law requires consideration of the entire context. Failure to do so constitutes palpable and overriding error. As stated by Cromwell, J.A. (as he then was) in *Halifax (Regional Municipality) v. Ed DeWolfe Trucking Ltd.*, 2007 NSCA 89, at para. 54:³

To determine the purpose of a by-law, one considers express statements of purpose contained in it or in other sources; draws inferences about the purpose from the text; has regard to the overall scheme of which the provision is part; looks at the evolution of the provision and the broader scheme, and assesses the external context in which it was enacted. ...

[citations omitted]

Municipal Issue; Municipal Purpose

[19] In considering the breadth of the powers of the City, it is important that the powers are delegated to the City to enable it to deal with "municipal issues", a term which is not defined. A by-law must have a proper municipal purpose; otherwise it falls outside the jurisdiction of the City and the powers delegated to it by the City.

[20] The power to deal with municipal issues is a broad power since it is not defined in the Act. However, that fact does not mean that an issue is a municipal issue merely because a policy decision is taken by City Council that an issue is important and it is desirable to take municipal action with regard to the issue. If all that was required to give jurisdiction to the City were such a policy decision, the determination of the scope of the jurisdiction of the

² *Friends of Lansdowne Inc. v. Ottawa (City)*, 2012 ONCA 273, para. 14; *Ontario Restaurant Hotel & Motel Association v. Toronto*, [2005] O.J. No. 4268 (C.A.), para. 3; *114957 Canada Ltée (Spray-Tech, Société d'arrosage) v. Hudson (Ville)*, [2001] 2 S.C.R. 241, para. 21 and 26

³ *Toronto Taxi Alliance Inc. v. Toronto (City)*, [2005] O.J. No. 5460 (C.A.), at paras. 42 and 43

City would be solely a matter for the decision of City Council. That result would be inconsistent with the fact that the powers delegated to the City under the Act are limited to municipal issues.

[21] Nor does the fact that a matter relates to one of the categories of matters identified in section 8(2) of the Act by itself make that matter a municipal issue. For example, the criminal laws of Canada certainly bear on the “social well-being of the City”, but that fact does not by itself make the matters dealt with by the *Criminal Code* municipal issues within the jurisdiction of the City under the Act.

The Purpose of the By-law: What the By-law Discloses

[22] The Preamble to the By-law is the only part of the By-law that provides potential assistance about its purpose. As noted above, it states that “the consumption of shark fin and shark fin product may have an adverse impact on the health, safety and well-being of persons, and on the economic, social and environmental well-being of the city of Toronto”. Section 2 of the By-law provides no person shall possess, sell or consume shark fin product within the City. In view of the Preamble, it must be inferred that the purpose of its prohibition is to prevent the occurrence of the adverse impacts referred to in the Preamble.

[23] The Preamble does not identify the nature of the potential adverse impacts of shark fin or shark fin product consumption. Consequently, it is of very limited assistance. Since the By-law is focussed on consumption of shark fin or shark fin product and mentions health, it is reasonable to infer that the by-law is directed to the possibility of poisoning or similar deleterious effects because of consumption of shark fin.

[24] Is that inference alone sufficient to establish the purpose of the by-law, or must the enquiry into the purpose go further? Help on this question is afforded in the decisions of L’Heureux-Dubé J. and LeBel J. in *114957 Canada Ltée (Spray-Tech, Société d’arrosage) v. Hudson (Town)*, [2001] S.C.R. 241 (“*Spray-Tech*”). The enabling legislation that applied in that case was more “open-ended” than here because it empowered regulation for the “general welfare” without being more specific. Nevertheless, the following remarks are instructive.

[25] At para. 20 in the reasons, L’Heureux-Dubé J. said:

While enabling provisions that allow municipalities to regulate for the “general welfare” within their territory authorize the enactment of by-laws genuinely aimed at furthering goals such as public health and safety, it is important to keep in mind that such open-ended provisions do not confer an unlimited power. Rather, courts faced with an impugned by-law enacted under an “omnibus” provision such as s. 410 C.T.A. must be vigilant in scrutinizing the true purpose of the by-law. In this way, a municipality will not be permitted to invoke the implicit power granted under a “general welfare” provision as a basis for enacting by-laws that are in fact related to ulterior objectives, whether mischievous or not. As a Justice of the Ontario Divisional Court, Cory J. commented instructively on this

subject in *Re Weir and The Queen* (1979), 26 O.R. (2d) 326 (Div. Ct.), at p. 334. Although he found that the City of Toronto's power to regulate matters pertaining to health, safety and general welfare (conferred by the *Municipal Act*, R.S.O. 1970, c. 284, s. 242) empowered it to pass a by-law regulating smoking in public retail shops, Cory J. also made the following remark about the enabling provision: 'There is no doubt that a by-law passed pursuant to the provisions of s. 242 must be approached with caution. If such were not the case, the municipality could be deemed to be empowered to legislate in a most sweeping manner.'

[26] At para. 53 in his reasons, LeBel J. said as follows:

The case at bar raises a different issue: absent a specific grant of power, does a general welfare provision like s. 410(1) authorize By-law 270? A provision like s. 410(1) must be given some meaning. It reflects the reality that the legislature and its drafters cannot foresee every particular situation. It appears to be sound legislative and administrative policy, under such provisions, to grant local governments a residual authority to deal with the unforeseen or changing circumstances, and to address emerging or changing issues concerning the welfare of the local community living within their territory. Nevertheless, such a provision cannot be construed as an open and unlimited grant of provincial powers. It is not enough that a particular issue has become a pressing concern in the opinion of a local community. This concern must relate to problems that engage the community as a local entity, not a member of the broader polity. It must be closely related to the immediate interests of the community within the territorial limits defined by the legislature in a matter where local governments may usefully intervene. In *Shell Canada Products Ltd. v. Vancouver (City)*, 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231, the Court emphasized the local ambit of such power. It does not allow local governments and communities to exercise powers in questions that lie outside the traditional area of municipal interests, even if municipal powers should be interpreted broadly and generously (see F. Hoehn, *Municipalities and Canadian Law: Defining the Authority of Local Governments* (1996), at pp. 17-24).

[27] The concern that animates the above comments is evident from them. If it was sufficient for a municipality simply to say "this is a by-law for the well-being of the community", a municipality would no longer be effectively accountable for its responsibility to act within the authority delegated to it by the province to enable the City, as stated in s. 8(2) of the Act, to determine what is in the best interests of the City and to respond to the needs of the City.

The Purpose of the By-law: What its Evolution Discloses

[28] The materials on the record include the public legislative record maintained by the Office of the City Clerk as it pertains to the enactment of the By-law (Respondent's Record, Vol. 1, Tab 2, Exhibits "A" to "K"). The earliest document is a notice of motion of a by-law substantially in the terms of the By-law, which was submitted to City Council on June 14 and 15, 2011.

[29] The Summary set out in the Member Motion is as follows:

Sharks are being slaughtered world-wide at the rate of over 70 million per year; with experts agreeing that sharks could be extinct within 10 to 20 years at the current rate of slaughter.

Shark finning is a wasteful, inhumane practice that involves cutting off a shark's fins and then tossing the still-live shark back overboard to drown, bleed to death, or be eaten alive by other animals. While shark fins are considered a delicacy in some restaurants, they have no significant nutritional value and are considered unhealthy for human consumption due to the accumulation of high levels of mercury and other toxins in the fins and flesh.

The Canadian government has banned 'shark finning' in Canadian waters since 1994 as has the United States (2009) and the European Community (2003); but the sale of shark fins continues in cities across Canada and the world. States and municipal governments - including Hawaii, Guam, Washington State, Oregon and California - representing over 47 million people have introduced or proposed bans on the trade and consumption of shark fins; with legislators in mainland China and Indonesia initiating bans and restrictions as well. The City of Brantford, Ontario is the first municipality in Canada to ban shark fins.

(Submitted to City Council on June 14 and 15, 2011 as MM9.3)

[30] This Summary identifies three themes or claims that persist through the documents as detriments that are intended to be addressed by the proposed ban:

- (1) at the current rate of the slaughter of sharks, they could be extinct within a foreseeable period like 10 to 20 years;
- (2) shark finning is an inhumane practice; and
- (3) shark fins are considered unhealthy for human consumption because they have high levels of mercury.

[31] The claims in (1) and (3) are matters of great debate. That debate is manifest in correspondence filed as part of the public legislative record.

Discrimination

[32] The Applicants submit that the by-law will have a negative effect on the Toronto Chinese community's culture, commerce and lifestyle. They say the By-law is also a gratuitous insult to the dignity of the Chinese community. The City has not banned, or even considered banning, any other food or clothing products enjoyed by any other ethnic groups, where the animals from which the food or skin or fur is obtained are raised or killed in ways that most residents of the City would consider painful and cruel if they were aware of it.

[33] The Applicants say that the By-law singles out the Chinese residents of the City, who are the primary consumers of shark fin soup, and prohibits them from eating this traditional soup within City boundaries. It thereby also harms the businesses that supply this food/food ingredient, whether canned, served in a restaurant or sold in dried form. This increases the likelihood that some Chinese weddings and other celebrations will now be moved to other, adjacent GTA municipalities like Markham, where the municipal council has not made the same by-law.

[34] To the extent that these submissions are intended to assert that the By-law is discriminatory because it is prohibitory and that it is therefore invalid, s. 8(3)(a) of the Act is relevant. It provides that a by-law under s. 8 of the Act in respect of a matter, which the By-law is said to be, may prohibit or regulate respecting the matter. The fact that a by-law is prohibitory does not by itself make it invalid.

Whether the By-law is in Respect of Animals

[35] The second recital in the Preamble to the By-law recites the power given to the City to pass by-laws in respect of animals. It is not clear from the materials and submissions whether the City is relying on this power, so the challenge raised by the Applicants in this regard must be addressed.

[36] The Applicants submit that the By-law is not a by-law in respect of animals. The By-law is a ban relating to "shark fin and shark fin food products". Grammatically, this must mean "shark fin products and shark fin food products". Neither of these two categories is an "animal".

[37] The City submits that the ban in the By-law is not a ban on a thing, but rather a ban in the activities of possessing, selling and consuming. It is true that the ban prohibits these activities, but by banning all of these activities rather than, for example, regulating only the sale of such products, it effectively creates a prohibition of the banned substances within the City.

[38] In any event, the ban is not a ban with respect to animals, as mentioned above.

[39] The fact that the ban effectively creates prohibited substances suggests a different concern about the validity of the By-law. That concern is whether the province has the power to create prohibited substances, *i.e.* to make the possession of a substance illegal as

such and punishable by a fine. Counsel did not make submissions that bear on that question sufficiently directly, so it is not addressed in these reasons and no view is formulated about it.

Whether the By-law is in respect of the economic, social and environmental well-being of the City: (1) Re: Potential Extinction of Sharks

(i) The Applicants' Submissions

[40] The Applicants submit that the By-law's purpose is directed against the extinction of sharks and lacks a proper municipal purpose.

[41] The first question here is what the direct purpose of the By-law is. The answer is that its purpose is to ban the prohibited shark products in the City. That purpose, stated by itself and without any elaboration as to the reason for the adoption of the purpose, is uninformative as to whether the By-law is a by-law in respect of the economic, social and environmental well-being of the City.

[42] Many of the submissions of the Applicants proceed on the basis that what is intended by the reference in the first recital to the Preamble of "an adverse impact... on the economic, social and environmental well-being of the City" is the environmental threat said to be posed by the potential extinction of sharks as a result of the slaughter of sharks to create products for sale. As stated above, this alleged environmental threat is a factor advanced in the motion for the ban that was proposed in June of 2011 and is a theme that persists in the public record on the proposed ban.

(ii) The Respondent's Submissions

[43] The submissions made for the City confirm that this alleged environmental threat and its potential consequences are the respect in which the By-law is said to relate to the economic, social and environmental well-being of the City. This is evident in the following excerpts from the written submissions of the City:

13. The current rate of human predation on sharks exceeds their reproductive capacity. The populations of many shark species have declined by more than 90% in the last 50 years. At the current rate of human predation, it is estimated that sharks will become extinct in 10 to 20 years.

14. This harm is exacerbated by a harvesting practice of catching live sharks, cutting off their fins, and returning the mutilated live sharks to the ocean waters. This practice, the existence of which the applicants characterize as "illusory", was described by those who have viewed the film footage as "wasteful", "inhumane", and as subjecting sharks to a "long and agonizing death." These fins ultimately become part of the product made available in Toronto and elsewhere.

15. Once the sharks are gone, there will be no shark fins available for sale or consumption. The oceans will be deprived

of a top predator and marine populations will be irreversibly altered, contributing to an overall degradation of ocean ecosystems which will adversely affect local environments and food sources.

16. . . . As described by the Center for Oceanic Awareness, Research, & Education, sharks "... are vital to the health of our oceans, and studies have shown that reduction in one species causes effects on other species, and sometimes these effects are unexpected and detrimental to local and regional economies." As described by the Humane Society International, sharks play a "unique role in marine ecosystems" and "massive depletion of sharks...has cascading effects."

17. While the consequences of irreversible changes to marine populations and degradation of ocean ecosystems cannot be predicted with certainty, the likelihood of adverse impacts on local communities is far from "remote" (to use the applicants' word). This is not just about sharks. As one deputant put it: '...I implore you to consider a ban on shark fins, not just because we want to keep sharks around, but because we want an earth and a planet that supports human life into the future.' Toronto does not exist in splendid isolation from the rest of the world. As described by another deputant:

Is this a concern to Toronto? One cannot visit a major grocery store – Loblaws, Longo's, Metro or any other...without seeing a wide variety of fishes offered for sale, as one can find on the menus of the majority of Toronto's restaurants, ethnic or otherwise. It is safe to conclude that there is a strong vested and direct interest in maintaining the productivity of the ecosystem that provides the bulk of these resources.

18. Toronto, along with all other local markets which support the modern commodification of sharks by purchasing and consuming their fins, contributes to the problem. Toronto can and must be part of the solution:

It is people who consume shark fin, thus drive the market for both legal and illegal product, which market in turn is leading to the destruction of entire species of shark, with inevitable subsequent ecological and socio/economic consequences, unintended or not, and people are concentrated in cities. The largest city in Canada is Toronto, thus Toronto's actual contribution to the problem is, like

that of any major city, significant. The symbolic contribution of a shark ban in Toronto is even greater.

19. While the record does not disclose the precise quantity of shark fins in Toronto, the City does not take issue with the applicants' assessment that the demand in Toronto is likely smaller than it is in other places. ...

Whether the Purpose is a Proper One

[44] Whether the environmental purpose of the By-law is a proper one depends on whether it relates to “the environmental well-being of the City”.

[45] There is much dispute in the materials on the record about the gravity and imminence of the alleged threat of extinction.

The Applicants' Submissions

[46] The Applicants contend the environmental purpose of the By-law is not a proper municipal by-law for two reasons:

- (1) that the City is the wrong level of government for the enactment of the By-law; and
- (2) that the effect of the By-law could not provide any identifiable environmental benefit to the City.

Level of Government

[49] The Applicants submit that protection of sharks is a matter that should be dealt with at the federal level of government (and possibly the provincial level), but not the municipal level, for the following reasons:

- (1) Canada and Ontario have a range of laws designed to protect species at risk and wildlife generally, both within Canada and worldwide, through international protocols to which Canada is a signatory. See for example the *Species at Risk Act*, S.C. 2002, c. 29 and accompanying regulations, the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C. 2002, c. 52 and accompanying regulations and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- (2) Canada and Ontario already protect wildlife, and regulate food from wildlife wherever it was hunted, fished or trapped. Several municipalities, including Toronto, have asked the Federal Minister responsible for the policy area to ban the importation of shark fins. However, the Minister has responded that federal research has concluded that this is unnecessary because legal shark fishing, which is the predominant form, is no different from any other commercial fishing. Canada already bans the practice of shark finning.

(3) The Supreme Court of Canada held, in the *Spray-Tech* decision, that legislation should be enacted by the right level of government to solve the problem. It also held that municipalities can make by-laws to supplement federal or provincial efforts. However, as there is no federal or Ontario law banning shark fin food products, that is not the function of this by-law, which stands alone.

(4) The federal government has treaty and protocol obligations for international wildlife protection, and has embassies in other countries to inform it as to fishing practices in those countries. The federal government is well placed to deal with international wildlife issues in an informed way. There is currently a federal private members' bill before Parliament, Bill C-380 of the 1st Session of the 41st Parliament, titled "An Act to amend the *Fish Inspection Act* and the *Fisheries Act*" (importation of shark fins), to ban the importation of shark fin products into Canada.

Identifiable Benefit to the City

[50] The Applicants submit that the by-law could not possibly have any benefit in protecting sharks. Toronto is not a major market for shark fin soup. Ninety-five percent of shark fins are consumed in China. The other 5% are consumed by the Chinese communities around the world. It is not known how much of that 5% is represented by the City, but given large Chinese communities in other Asian countries, South America, Europe, the U.S. and other parts of Canada it is unlikely to reach even 1%, according to the Applicants.

[51] The Applicants make the following submissions in this regard:

(1) The Supreme Court of Canada has held that, having regard to the increasingly important role municipal governments play in the everyday lives of citizens, a modern judicial approach of deference must be applied in interpreting the scope of municipal powers, provided that there is an identifiable benefit to the municipality's inhabitants.

(2) The definition of "municipal issue" must be one that affects the municipality or its population. The Ontario Court of Appeal has held that the Act was amended "to give municipalities in Ontario 'the tools they need to tackle the challenges of governing in the 21st century'" and that generally municipal powers "are to be interpreted broadly and generously within their context and statutory limits, to achieve the legitimate interests of the municipality and its inhabitants." [Emphasis added]

(3) A municipality like Toronto does not govern the oceans of the world, or of Canada, or the waters of Ontario. Although the City is entitled to consider factors outside its boundaries, when it makes laws, the legitimate interests of the municipality and its inhabitants must be contained within the territory of the municipality. In *Holyday v. Toronto (City)*, (2010) 74 M.P.L.R. (4th) 194 (S.C.J.) at para. 25 the Ontario Divisional Court stated that:

This conferral of broad powers is consistent with the current jurisprudence of the Supreme Court of Canada dealing with the

interpretation of municipal powers. The Court has adopted a generous approach to interpretation of those powers (*114957 Canada Ltée (Spray-Tech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 (S.C.C.) at paras. 23 and 26). A court's approach should be deferential. In applying a general provision allowing a municipality to act to secure peace, order, good government, health, and general welfare within its territory, the Supreme Court asked whether the enacted provisions regulating the use of pesticides "have a reasonable connection to the municipality's permissible objectives" (at para. 26). [Emphasis added]

(4) The by-law in this case, which continues to allow the entire shark to be eaten in unlimited quantities but bans soup made from its fins, has no such connection to the territory of the City or its permissible objectives.

(5) In *Shell Canada, supra*, the Supreme Court of Canada held that Vancouver's ban against doing business with Shell lacked any proper municipal purpose, as stated at paras. 31 to 33 and 35:

¶31 ...The explicit purpose is to influence Shell to divest in South Africa by expressing moral outrage against the apartheid regime and to join the alleged international boycott of its subsidiaries and products until Shell 'completely withdraws from South Africa'. There is no mention as to how the good government, health or welfare of the City or its citizens is affected or promoted thereby. ... I therefore agree with the trial judge that the respondent was seeking to use its powers to do business 'to affect matters in another part of the world' (pp. 348-49), a purpose which is directed at matters outside the territorial limits of the City.

¶32 ...So far as the purpose of the *Vancouver Charter* is concerned it is perhaps best expressed in s. 189, which provides that 'Council may provide for the good rule and government of the city'. In this regard its purpose does not differ from the purpose generally of municipal legislation which, as stated above, is to promote the health, welfare, safety or good government of the municipality. This places a territorial limit on Council's jurisdiction. No doubt Council can have regard for matters beyond its boundaries in exercising its powers but in so doing any action taken must have as its purpose benefit to the citizens of the City. The *Vancouver Charter* is careful to expressly provide for activities in which Council is permitted to engage outside of its limits even when such activities clearly redound to the benefit of the inhabitants of the City. Such activities include participation in public

works projects with other municipalities (s. 188) and acquiring property required for the purposes of the City (s. 190).

¶32 ...These sections are general sections found in most if not all municipal Acts and must be construed subject to the limitations imposed by the purpose of the statute as a whole. Any powers implied from their general language must be restricted to municipal purposes and cannot extend to include the imposition of a boycott based on matters external to the interests of the citizens of the municipality.

¶35 In summary on this point, applying the principles enunciated above, I have concluded, as did the trial judge, that the purpose of the Resolutions is to affect matters beyond the boundaries of the City without any identifiable benefit to its inhabitants. This is a purpose that is neither expressly nor impliedly authorized by the Vancouver Charter and is unrelated to the carrying into effect of the intent and purpose of the Vancouver Charter.

[Emphasis added]

The Respondent's Submissions

[52] The submission of the Respondent, in summary form, is as follows:

(1) Shark fins cannot be used in Toronto and elsewhere without killing sharks. Left unchecked, the current rate of human predation on sharks will soon deprive the ocean ecosystem of a top predator vital to its well-being. While the environmental and ecological impact of this imminent extinction cannot be predicted with precision, what is certain is that Toronto has no immunity from massive, cascading and irreversible ecological changes. Toronto does not exist in splendid isolation from the rest of the world. Ocean fish sold in Toronto supermarkets to feed Torontonians come from the same ocean ecosystems now inhabited by sharks.

(2) By prohibiting a product which carries significant potential for ecological and environmental harm, the by-law protects Torontonians and it recognizes the responsibility of Torontonians for the impact of their actions on the global community.

Identifiable Benefit to the City

[53] The Respondent sets out its submissions in detail, as follows:

(1) As a biological being, the value of a shark is as a top ocean predator vital to the health of the ocean ecosystem. As a living creature, the value of a shark lies in its beauty and elegance.

(2) The harvesting of sharks for their fins and the corresponding use of the fins in Chinese cuisine dates back at least one thousand years. For much of this time, these practices have been carried out without harmful consequences. Unfortunately, the commodification of sharks to meet the demand for their fins in modern times has now reached the point where sharks are being killed at a rate of over 70 million each year.

(3) The current rate of human predation on sharks exceeds their reproductive capacity. The populations of many shark species have declined by more than 90% in the last 50 years. At the current rate of human predation, it is estimated that sharks will become extinct in 10 to 20 years.

Level of Government

[54] The detailed submission of the Respondent is as follows:

(1) As the level of government closest to the people, municipal council are commonly on the forefront of change. For example, initiatives designed to curb smoking and to ban non-essential use of pesticides originated with municipal councils. The important role of municipalities in promoting grassroots societal change is articulated as follows by the Centre for Oceanic Awareness, Research & Education:

By choosing to move forward with this landmark resolution and the by-law it directs, Toronto will encourage other jurisdictions, and eventually, provinces, to take similar action. In fact, without the approval of the City of Toronto, the primary stakeholder constituency, the province of Ontario would be reluctant to take further action. It is therefore incumbent upon the municipality to offer leadership in this matter.

Analysis

Level of Government

[55] The best way to address this matter is to proceed on the assumption that the federal and/or provincial government could impose the ban enacted by the By-law. On that basis, the question becomes: 'Is the federal or provincial level, for that reason, a better level of government at which to address the problem?' Presumably a federal or provincial ban could have wider and larger effect than the Toronto ban. But if there is no disposition at either level to introduce such a ban, that still would leave the question as to why that in itself should prevent the City from enacting the ban, if the ban has a proper municipal purpose. The submissions of the Applicants do not answer that question.

[56] The purport of the submissions of the Respondent is that action by the City would encourage other governments in Ontario and elsewhere to take similar action. That may be so, but that would not by itself make the City a proper level of government. That would depend, as stated above, on whether the ban has a proper municipal purpose. It is necessary

to remember that s. 6 of the Act, under the heading of “Scope of Powers”, provides that the powers granted to the City are to enable it “to respond to municipal issues”.

[57] Whether the ban has such a municipal purpose is the determinate issue. If it does have such a purpose, the by-law would not be invalid merely because another level of government could impose the ban with potentially greater effect. (To avoid any misunderstanding, it is in order to add that, if another government level were to enact the ban, that might well make the above conclusion inapplicable.)

Identifiable Benefit to the City

[58] The Applicants submit that the By-law will not have any benefit to the City. They say it will have a negative effect on the Toronto Chinese community’s culture, commerce and lifestyle and that it is gratuitously insulting to the dignity of the Chinese community.

[59] The By-law will presumably have a negative effect on commercial activities that depend upon the availability of shark fin and shark fin products.

[60] The City disputes that the consumption of shark fin soup can be regarded as so important within the Chinese community of Toronto that its availability is an essential part of its culture and lifestyle.

[61] The City disputes that the by-law is gratuitous. On the contrary, the City submits that the By-law is important to the City with respect to the protection of sharks.

[62] The Applicants submit that the By-law could not make a significant difference to the protection of sharks for the reasons referred to above.

[63] The City submits that the ban is of identifiable benefit to the City with regard to the protection of sharks.

[64] The argument of the City has the following steps:

- (1) The extinction of sharks is a likely result of the current rate of human predation. This rate is supported by the global appetite for shark.
- (2) The potential extinction of sharks is a threat to the vitality of the health of oceans which will likely result in adverse impacts on a planetary or global scale.
- (3) Because these potential adverse impacts are global, they potentially affect local and regional economies. The City is one such local economy.
- (4) Consequently, action by the City to arrest the extinction of sharks is of identifiable benefit.
- (5) While the City does not dispute the Applicants’ assessment that the demand in Toronto for shark fins is “likely smaller than it is in other places”, the ban is of identifiable benefit with respect to the protection of sharks because it may encourage other jurisdictions to impose similar bans.

[65] On the basis of the material and the submissions, the ban will not by itself have any identifiable benefit for Toronto with respect to the environmental well-being of the City.

[66] If other jurisdictions decide to impose such a ban, their action, *i.e.* not the action of the City of Toronto, might have an identifiable benefit with respect to the environmental well-being of the inhabitants within those jurisdictions. But that does not mean the By-law responds to “municipal issues”, the term used in s. 6 of the Act relating to the scope of the powers of the City. On the contrary, it suggests that, although ecological threats facing the planet affect the entire planet, including the City, that does not make those ecological threats a municipal issue.

[67] The conclusion must be that the by-law is not a by-law respecting the environmental well-being of the City.

Whether the By-law is in respect of the economic, social and environmental well-being of the City: (2) re Cruelty to Sharks

[68] As noted above, the motion that initiated the process that resulted in the By-law also identified as a reason for the ban the inhumane nature of the practice of finning sharks. The parties do not dispute that the practice is inhumane.

[69] From the submissions of the City, it may be relying on that fact as a ground for the validity of the by-law. For that consideration to be relevant, it would need to relate to the economic, social or environmental well-being of the City. The inhumane character of the practice would not bear on the economic or environmental well-being of the City, so the question is whether it bears on the social well-being.

[70] The City submits that the By-law gives voice and effect to social and environmental values of Toronto pertaining to the natural environment, including animals. McLachlin J. (as she then was) said as follows in her dissenting reasons in the *Shell Canada* decision at para. 85:

I would cast the proper functions of a municipality in a larger mould. The term ‘welfare of the citizens’, it seems to me, is capable of embracing not only their immediate needs, but also the psychological welfare of the citizens as members of a community who have an interest in expressing their identity as a community. Our language recognizes this: we speak of civic spirit, of city pride. This suggests that City Council may properly take measures related to fostering and maintaining this sense of community identity and pride. Among such measures may be found community expression of disapproval or approval of different types of conduct, wherever it is found. The right of free expression, one of the most fundamental values of our society, may be exercised individually or collectively. Are the citizens of a city to be prevented from expressing through their elected representatives their disapproval of conduct which they feel to be improper? Are

they to be forced to do business with a firm whose conduct they see as objectionable, simply because the conduct occurs outside the territorial boundaries of the city? Can the desire of the citizens' elected representatives to express their views on such matters and to withdraw support for the conduct to which they object by refusing to do business with its perpetrators be said to be totally unrelated to the welfare and interests of the citizens of the city? To all these questions I would answer no.

[71] This view was not endorsed by the majority in that decision. Counsel did not refer to any other cases that took the view expressed above.

[72] The *Shell Canada* case dealt with an offensive practice carried out abroad, as does this case. In *Shell Canada* the offensive practice was apartheid in South Africa.

[73] It is important that the issue in *Shell Canada* was the validity of a council resolution to prohibit the City of Vancouver from buying gas from a company associated with a company that carried on business in South Africa. The By-law was concerned with how the City of Vancouver spent public resources, not with activities of inhabitants of the City dealing with each other in the private sector or indeed, with the food consumption practices of individual inhabitants.

[74] The offensive practice in the present case - shark finning - does not occur in the City. Some Torontonians undoubtedly hold “the social and environmental values” to which the City refers in its submissions. But, whether or not the By-law gives voice to such values is not the test stated in the Act. The test in this regard is whether the By-law has a municipal purpose that relates to “the social well-being of the City”. The phrase “social well-being of the City” is not defined in the Act and no case law on the question has been cited. The phrase must refer to the ability of the inhabitants of the City to live together in the City as an urban society. There is nothing to suggest that the offensive practice of shark-finning in distant oceans affects the ability of Torontonians to live together as an urban community. For this reason, it cannot be considered to relate to their social well-being.

Whether the By-law is in respect of Health

The Applicant's Submissions

[75] The Applicants submit that there have not been any reported ill effects on the health of residents of the City from eating the occasional bowl of shark fin soup, nor any clinical studies suggesting that the normal frequency and volume of the consumption of the soup is a greater danger to health in the City than the normal frequency and volume of consumption of tuna, chicken or beef. Shark meat is sold in fish stores and supermarkets in the City. Thus, it is legal to sell and eat every part of a shark except the fins.

[76] The Applicants say that there is no evidence that any threat to the health of the inhabitants of the City arises from the purchase, sale, mere possession or occasional

consumption of shark fin soup. There is no evidence that Chinese residents of the City are at risk of incurring, for example, Minamata disease.

[77] The Executive Director of Municipal Licensing and Standards advised in his report of October 4, 2011, that, “Although staff have identified clear concerns with the shark fin industry, no clear municipal purpose - mainly health and safety, consumer protection or nuisance control exists.” Counsel submits that the City is not required to follow a staff report. Even assuming that is so, which seems likely, it does not put in question the fact that the staff made the reported assessment.

The Respondent’s Submissions

[78] The City submits that shark fins are unhealthy for human consumption. It relies on the submissions made by Committee to Council by a chef and restaurant owner whose standards motivate him to "look at the whole story" before using food ingredients. This deputant explained that shark fins are unhealthy for human consumption because of the accumulation of high levels of mercury and other toxins. As apex predators, sharks ingest all accumulated toxins in the marine life below them in the food chain, and therefore contain the "highest toxin levels" among all other fish.

[79] The City submits that in addition, the process of treating and drying shark fins has been shown to concentrate mercury and to make the chemical levels higher than they would be otherwise. This is because the shark fin is often bleached in hydrogen peroxide to whiten it and make it more desirable for consumption. When the shark fins are not bleached, they are instead subjected to a “smoke of sulphur” overnight.

Analysis

[80] The Applicants dispute the reliance on the submissions of the chef. They say that his submissions are not those of an expert and that other sources provide different views about the risks of shark fin food consumption. From the materials referred to by counsel, about all that can be concluded is that there are expert concerns about the toxic effects of excess consumption of shark fin food products, but there is no agreement on what levels of consumption are excessive for various different types of consumers.

[81] While there is no material before the Court on the point, it must be the case that there are many food products which can be injurious to health if they are consumed to excess. Most people could think of examples quite readily.

[82] In any event, it does not appear that a single bowl of shark fin soup poses any health threat to the consumer. It depends on the level of consumption over time. The ban of course applies to the consumption of a single bowl of shark fin soup.

[83] The submissions in favour of the By-law refer to the fact that the powers granted by the Act are stated to be broad and are to be interpreted broadly. This is true in itself but it is also necessary to keep in mind the duty of vigilance set out above by L’Heureux-Dubé J. in *Spray-Tech*, set out above, and the similar caution expressed in that decision, also mentioned above. In the words of LeBel J., in the excerpt set out above, there must be a problem that engages the community as a local entity, not [only as] a member of the broader politic.

[84] No doubt there are health concerns which involve the community as a local entity. One need only think of the example of plagues. There is nothing to suggest that the consumption of shark fin food products involves any possible threat to the health of the community as a local entity. Such consumption is necessarily the act of an individual consumer and there is nothing to suggest that it could possibly affect the health of others in the community.

[85] Taking all of these considerations into account, the conclusion must be that there is no air of reality to the potential adverse impact on health from shark fin consumption referred to in the first recital in the Preamble of the By-law. Accordingly, the By-law is not a by-law for a municipal purpose respecting the health of persons in the City.

Other Issues

[86] The Applicants raise issues relating to enforceability of the By-law. They also challenge its constitutionality.

[87] In view of the conclusion that follows from what is said above, it is not necessary to deal with these other issues.

Conclusion

[88] For the reasons set out above, the By-law is *ultra vires*.

Exercise of the Discretion of the Court

[89] The responsibility of the Court is to determine the least coercive remedy that will check the excess of jurisdiction. The remedy sought by the Applicants is a declaration that the By-law is invalid. The Applicants acknowledge that the granting of this remedy is within the discretion of the Court. In view of the finding of *ultra vires*, a declaration to that effect is apparently the least coercive way to check the excess of jurisdiction.

Other Considerations as to Remedy

[90] The By-law is highly intrusive. It affects the consumption by City inhabitants in the privacy of their residences of food products which have not been made illegal by federal or government action. There are penalties for non-compliance. Authority is given to inspect such premises for compliance, even though there is no regulatory regime established by the By-law.

[91] It is reasonable to expect that the By-law will have a detrimental effect upon the business activities of restaurant operators in the Chinese community. It will detrimentally affect the ability of members of the Chinese community to participate in what some people in the community regard as a practice that is an important part of their traditional practices as members of the Chinese community.

[92] Since the By-law lacks a proper municipal purpose, these adverse affects are unwarranted and should not be allowed to continue. The declaration sought by the

Applicants will presumably have that effect. Without such a declaration, the By-law would remain in place and be enforceable and its unwarranted adverse affects would be unchecked.

[93] These considerations support the exercise of the discretion of the Court in favour of the Applicants.

Conclusion

[94] For the reasons set forth, a declaration is granted to the Applicants against the City that the By-law is *ultra vires* and without any force and effect

[95] If necessary, counsel may make written submissions to me about costs. In that event, the Applicants should make the first submissions within 30 days of the release of these reasons, with any responding submissions from the City to be made within 15 days after the Applicants', and any reply submissions within 15 days afterwards. It would be helpful if a copy of any submission could be sent by e-mail to my assistant.

Spence J.

Released: November 30, 2012

CITATION: Eng v. Toronto (City), 2012 ONSC 6818
COURT FILE NO.: CV-12-459825
DATE: 20121130

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**HUGHES ENG, BARBARA CHIU,
PETER TAM and JACKY MA**

Applicant

- and -

THE CITY OF TORONTO

Respondent

REASONS FOR DECISION

Spence J.

Released: November 30, 2012

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APPENDIX “C”

Bill No. 68
2012

By-law No. PH-17

A by-law to prohibit the possession, purchase, sale, trade, distribution, consumption, or preparation for consumption of Shark Fins within the City of London;

WHEREAS subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (“*Municipal Act, 2001*”) provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues;

AND WHEREAS subsection 8(3) of the *Municipal Act, 2001* authorizes a municipality to regulate or prohibit a matter for which it may pass a by-law under section 10 of the *Municipal Act, 2001*;

AND WHEREAS subsection 8(4) of the *Municipal Act, 2001* provides that a by-law may be general or specific in its application and may differentiate in any way and on any basis a municipality considers appropriate;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(2) paragraph 5 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality;

AND WHEREAS subsection 10(2) paragraph 6 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS subsection 10(2) paragraph 8 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting the protection of persons and property;

AND WHEREAS subsection 10(2) paragraph 9 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting animals;

AND WHEREAS there are reports that the consumption of shark fins and shark fin derivative products by humans may cause serious health risks, including risks from mercury;

AND WHEREAS there are reports that the practice of shark finning (where a shark is caught, its fins are sliced off while many are still alive, and the live animals returned to the sea severely and almost always fatally wounded) constitutes a serious threat to the oceans’ ecosystems and biodiversity;

AND WHEREAS there are reports that over 70 million sharks are being slaughtered every year for their fins, at a rate which experts predict could result in the loss of many shark species within a decade;

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AND WHEREAS the City of London is or may become a market for shark fins where shark fin soup is or may be prepared and consumed in various establishments;

AND WHEREAS the risk to the health of the City's inhabitants and the negative impact to the oceans' ecosystems, posed by the consumption and trade in shark fins, are both municipal issues and affect the citizens of London;

AND WHEREAS environmental protection has emerged as a fundamental value in Canadian society and the common future of every Canadian community depends on a healthy environment;

AND WHEREAS reducing the market for shark fins in the City of London conforms to the precautionary principle as it applies to the loss of shark species and the resulting negative impact to the oceans' ecosystems;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1.0 Definitions

1.1 For the purposes of this By-law:

“**City**” means The Corporation of the City of London;

“**Council**” means the Municipal Council for the City;

“**Municipality**” means the geographic area of the City of London;

“**Shark**” means a fish of the taxonomic superorder Selachimorpha that is commonly referred to as a shark and includes any fish that belongs to a species under the common name of shark;

“**Shark Fin**” means the raw, dried, or processed fin or tail of a Shark, and without limitation includes any product derived therefrom.

2.0 Administration

2.1 The City's Municipal Law Enforcement Services shall be responsible for the administration and enforcement of this By-law.

3.0 General Prohibitions

3.1 No person shall possess, purchase, consume, sell, offer for sale, trade or distribute any Shark Fin within the Municipality.

3.2 No person shall prepare for consumption, or cause to be prepared for consumption, any Shark Fin within the Municipality.

3.3 No person shall process, or cause to be processed, any Shark Fin within the Municipality.

3.4 No person shall possess, purchase, sell, offer for sale, trade or distribute anything within the Municipality that is described as containing Shark Fin, or that is described as made from Shark Fin, including, without limitation, shark fin soup.

4.0 Inspection

4.1 Inspections under this By-law may be conducted pursuant to the City's Inspections By-law.

5.0 Penalty

5.1 (1) Every person who contravenes any provision of this By-law is guilty of an offence.

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(2) A director or officer of a corporation who knowingly concurs in the contravention of this By-law is guilty of an offence.

5.2 Any person convicted under this By-law is liable:

- (a) upon a first conviction, to a maximum fine of \$15,000;
- (b) upon a subsequent conviction, to a maximum fine of \$30,000.

5.3 Despite section 5.2, where the person convicted is a corporation, the corporation is liable:

- (a) upon a first conviction, to a maximum fine of \$30,000;
- (b) upon a second conviction, to a maximum fine of \$75,000.

6.0 Exemptions

6.1 For a limited period of 180 days from the date this by-law is enacted, there shall be an exemption from the prohibitions set out in sections 3.1, 3.2, 3.3 and 3.4 if the Shark Fins were within the Municipality prior to the day this By-law is enacted.

7.0 Validity & Interpretation

7.1 If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

8.0 Short Title

8.1 This By-law may be referred to as the "Shark Fin By-law".

9.0 Enactment

9.1 This By-laws shall come into force and effect on the day it is passed.

PASSED in Open Council on January 31, 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading - January 31, 2012
Second reading - January 31, 2012
Third reading - January 31, 2012